GTE ORIGINAL

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August 19, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Errata to Comments on Petitions for Reconsideration of GTE
CC Docket No. 96-45

Dear Mr. Caton:

This letter serves to correct two citation errors in the Comments of GTE in CC Docket No. 96-45, *In the Matter of Federal-State Joint Board on Universal Service*. Attached are an original and 11 corrected copies of the Comments of GTE.

Footnote 18 on page 9 should read "*In the Matter of Petition for Waivers Filed by TelAlaska, Inc. and TelHawaii, Inc.*, AAD 96-93, DA 97-1508 (July 16, 1997) at ¶ 18 *(emphasis added) (footnote omitted)*.

Footnote 24 on page 11 should read "Petition of TelHawaii at 4."

If any questions should arise concerning the above, please contact the undersigned.

Sincerely,

Gail Polivy

cc: All Petitioners
Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	**CC Docket No. 96-45**
Federal-State Joint Board on Universal Service	)	
	)	
	)	

COMMENTS ON PETITIONS FOR RECONSIDERATION

GTE SERVICE CORPORATION
and its affiliated domestic telephone operating, wireless, and long distance companies

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August 19, 1997

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EXECUTIVE SUMMARY

GTE submits that the Commission should reconsider its *Universal Service Order* as described herein in order to promote the universal service goals of the Telecom Act, but should deny reconsideration to those parties that would place the provision of affordable local telephone service at even greater risk. Specifically, in response to the submissions of various parties, GTE recommends:

- As a minimum, the Commission should grant USTA's request that non-rural LECs be permitted a five-year transition to implement the reallocation of their above-average loop costs from the interstate to the intrastate jurisdiction. The Commission should note, however, that the removal of this critically important interstate mechanism for the support of intrastate rates represents bad policy.

- In view of the continuing strong support of many segments of the industry, the Commission should require carriers to recover their universal service contributions through express end user surcharges. Such charges would ensure that universal service support is explicit and predictable as required by the Act, avoid disadvantaging any particular group of carriers, and prevent rate churn.

- The Commission should not adopt MCI's proposal for a unitary state cost proxy model. Use of a single model would invite even greater distortions than those caused by individual state cost proxy models. Instead, states should be required to utilize engineering models that will factor in a LEC's particular network configuration, switch types, switching locations, and network costs. Only in this manner can universal service support be based upon real world results.

- Equally specious is TelHawaii's request for an exemption from the policy prohibiting transfer of exchanges for the purpose of increasing universal service support. TelHawaii offers no viable reasons for considering this issue, or the question of whether or not Hawaii is an "insular area" for universal service purposes, at this time. If the Commission nonetheless determines to address these issues here, it should deny TelHawaii's petition.

- Consistent with the requirements of the Act and economic efficiency, the prescribed increase in certain subscriber line charges should not be rolled back as requested. Such flat-rate charges mirror the way their underlying costs are incurred and, hence, promote economic rationality in the marketplace. Instead, all subscriber line charges should be increased to recover the full interstate loop cost. Only if such an increase would render local service unaffordable should a cap be applied; any differences between a cap and the full cost should be provided as explicit support from the federal universal service fund.

The Commission should also clarify or modify its decision in a number of additional respects as requested by other petitioners.

- First, it should reaffirm that state consortia may not both obtain discounts on universal services they purchase and receive universal service support for then providing those services to others.

- Second, the three year look back period for determining the Lowest Corresponding Price should be reduced to one year to reflect the typical tariff's average life span, and historical and promotional tariffs should not be included in the look back requirement.

- Third, the Commission should define toll limitation to require either toll blocking or toll control, but not both, because toll control is not widely available, is expensive to provide, and is less effective than toll blocking.

Finally, as requested by CTIA, the Commission should clarify how its universal service rules apply to CMRS providers.

- CMRS providers should be allowed to use their TRS revenue calculations minus non-end-user revenues as a proxy for universal service purposes, but should also be permitted to conduct special studies to determine the jurisdictional mix of their traffic if desired.

- States should not be permitted to engage in rate regulation of CMRS under the guise of universal service programs, but should be required to apply universal service obligations to all carriers on a competitively and technologically neutral basis and to avoid double counting of interstate or intrastate traffic for the purpose of universal service contributions.

- It would also be advisable for the Commission to clarify issues such as the jurisdictional allocation of CMRS traffic prior to the due date for the universal service worksheet.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	**CC Docket No. 96- 45**
	)	

COMMENTS ON PETITIONS FOR RECONSIDERATION

GTE Service Corporation and its affiliated domestic telephone operating,[1] wireless,[2] and long distance companies[3] (collectively "GTE") respectfully submit their comments on certain petitions for reconsideration in the above-referenced docket.[4] Petitioners raise a host of issues addressing the lawfulness of the *Universal Service Order*, the definition of universal service, eligibility requirements for universal service payments, and the proper administration and support mechanisms. As discussed in detail below, the Commission should entertain all petitions that further the universal

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[1] GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., and Contel of the South, Inc.

[2] GTE Mobilnet Incorporated, Contel Cellular Inc., and GTE Airfone Incorporated.

[3] GTE Card Services Incorporated.

[4] *See In the Matter of Federal-State Joint Board on Universal Service,* Report & Order, CC Docket No. 96-45 (released May 8, 1997) ("*Universal Service Order*"); Order on Reconsideration, FCC 97-246 (released July 10, 1997) *("Reconsideration Order").* GTE has also filed an appeal of the *Universal Service Order.*

service goals of the Telecommunications Act of 1996 ("Telecom Act"),[5] but deny petitions seeking to undermine those goals.

I. THE COMMISSION SHOULD MODIFY THE REQUIREMENT THAT FEDERAL UNIVERSAL SERVICE RECEIPTS BE USED ONLY TO OFFSET THE INTERSTATE REVENUE REQUIREMENT

USTA asks the Commission to modify its determination that, effective January 1, 1999, federal universal service receipts be used only to offset the interstate revenue requirement through reductions in interstate access charges in order to permit a transition period of no longer than five years.[6] Such a modification is necessary as a minimum because of the Commission's concomitant decision to deny non-rural LECs the authority to shift excess loop costs to the interstate jurisdiction under Section 36.601(c) of the Rules after January 1, 1999.[7] To mitigate the adverse impact of this rule change, GTE supports USTA's proposal that, for a period of five years following the date the ban on cost-shifting becomes effective, non-rural LECs be permitted to reduce interstate access charges by an amount equal to the interstate high cost support received from the new federal fund less the amount of Part 36 interstate high cost support received before that date.[8] This transition period will permit LECs and state commissions sufficient time to develop mechanisms to recover the costs of providing service to high-cost areas through intrastate-only mechanisms.

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5 Pub. L. No. 104-104, 110 Stat 56.

6 Petition for Reconsideration by United States Telephone Association ("USTA"), Federal -State Joint Board on Universal Service, CC Docket No. 96-45, at 9. Throughout this document petitions for reconsideration in CC Docket 96-45 will be cited in the following manner: "Petition of [party name] at [page number]." *See* Access Charge Reform, CC Docket No. 96-262, FCC 97-158, ¶ 381 (rel. May 16, 1997) ("First Report and Order").

7 Petition of USTA at 9.

8 *Id.*

However, the Commission should recognize that the USTA approach is nothing more than a band-aid to ameliorate the consequences of a bad decision that eliminates what is essentially the sole explicit universal service support currently provided by the interstate jurisdiction to ensure affordable local service prices. Removing the authority for non-rural carriers to shift above-average loop costs to the interstate jurisdiction will further impair the achievement of universal service objectives because, without such cost shifting authority, significant problems will be created for state commissions in states with extensive areas characterized by abnormally high costs.

Although the current federal USF reduces the burden on intrastate rates for abnormally high cost areas, it does not solve the problem completely. Today, many LECs still defray additional costs through implicit subsidies in their local, intrastate access, and intraLATA toll rates. If the Commission now prevents state commissions from relying on Section 36.601(c), state commissions already burdened with replacing the implicit subsidy systems in the current ILEC rate structures with explicit subsidies will, in addition, need to find a way to allow carriers to recover the lost high cost support.

II. THE COMMISSION SHOULD INSTITUTE MANDATORY END USER SURCHARGES

Several parties ask the Commission to reconsider its refusal to require the recovery of universal service funding contributions through end user surcharges on interstate retail telecommunications revenues.[9] They assert that the current recovery mechanism perpetuates the practice of implicit subsidies, results in carriers altering rates when their support obligations fluctuate, and may force states to raise rates for

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[9] *See Universal Service Order* Section XIII; Petitions of U S West at 9-10, AT&T at 2-7; Comcast at 20.

local service.[10] These concerns reflect only a portion of the broad support in the industry for the establishment of mandatory end user surcharges as the most competitively neutral recovery mechanism for universal service.[11] GTE agrees that the Commission should prescribe an explicit end user charge to be assessed against all interstate retail revenues.

The Telecom Act requires that "explicit and sufficient" universal service support be raised through "specific, predictable and sufficient" mechanisms.[12] Nonetheless, the current Commission plan leaves carriers with little option but to recover their universal service contributions in the rates charged their customers for other services. Thus, the Commission has not only failed to implement Congress' intent to replace such implicit support mechanisms, it has created large new hidden support flows -- totaling $2.65 billion alone for schools, libraries and rural health care providers.

Clearly, the prescription of an explicit support mechanism is necessary to comply with the Congressional mandate. It follows that the Commission should require contributors to collect universal service funding through a surcharge based upon an end user's assessable revenues and clearly reflected on the end user's bill for service. In addition to complying with the statutory mandate, recovering universal service contributions in this manner would obviate the need for carriers to change their access rates as a result of fluctuations in their support obligations. Accordingly, the

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[10] Petition of U S West at 10.

[11] *See* e.g., CC Docket 96-45 Comments: ALLTEL at 7-8; Ameritech at 30-31; AT&T at 8, BellSouth at 15-16; California Department of Consumer Affairs at 38-40; GTE at 36; LCI at 14; MFS at 12-13; NYNEX at 23-24; PacTel at 20-22; PageNet at 16; SBC at 11-13; TDS at 6-8; U S West at 45-46; USTA at 22-23; Worldcom at 40-41; CC Docket 96-45 *Reply Comments:* ACTA at 6; AirTouch at 20-21; ALTS at 5-8; Bell Atlantic/NYNEX at 2-3; California SBA at 4-5; KMC at 4; SBC at 2-3.

[12] *See* 47 U.S.C. §§ 254(e), 254(d).

Commission should prescribe implementation of a universal service support mechanism in the nature of a mandatory, uniform end-user surcharge.

III. THE COMMISSION SHOULD NOT ADOPT A ONE-SIZE FITS ALL COST STUDY FOR DETERMINING UNIVERSAL SERVICE SUPPORT REQUIREMENTS

In its Petition for reconsideration, MCI requests that the Commission reconsider its decision to allow state commissions to submit their own forward-looking economic cost studies to be used to establish federal universal service requirements.[13] In its place, MCI would have the Commission establish a unitary federal model to be used by all states. MCI argues that a unitary model will comport with Section 254 of the Communications Act, which directs that "[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."[14]

However, MCI's unitary model is neither an efficient nor a lawful means of meeting the goals of Section 254(b)(5). Instead of a cost proxy model, GTE supports the use of a company-specific engineering study because it is a much more reliable measurement of actual networking costs and, hence, of universal service requirements. This is so because LECs' actual forward-looking costs are driven by their particular network configuration, the types and locations of their existing switches, and their specific costs for switches and associated network facilities, among other things. Unlike a cost proxy model, which largely ignores existing network technology and investment,[15]

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[13] Petition of MCI at 2-4.

[14] 47 U.S.C. § 254(b)(5) (emphasis added); see also id. § 254(d) ("Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.").

[15] The Hatfield Model is particularly egregious in this regard. That model intentionally ignores real-world costs and flouts well-established engineering standards

(Continued...)

an engineering model factors existing network design and technology into its calculations and produces reliable, real world results.

These important benefits of an engineering model in turn foreclose reliance on a single state model. The single state model necessarily would be compromised by the significant discrepancies that would result from extrapolations of model conditions throughout the covered area. Because the state proxy model would be essentially static, unlike an engineering model, it would not consider growth, uncertainty, indivisibility of investment, breakage, or repeated placement costs. The exclusion of these factors contradicts conditions in the real world. Thus, MCI's unitary state model would likely result in a serious distortion of actual events.

Accordingly, as stated in its recently filed Oppositions and Comments in the Access Reform proceeding, GTE urges the Commission to permit individual carriers to use state-approved forward-looking engineering models to estimate the costs of providing universal service.

IV. THE COMMISSION SHOULD REJECT TELHAWAII'S REQUEST FOR SPECIAL TREATMENT

In its Petition, TelHawaii asks the Commission to "clarify" the *Universal Service Order* in two respects. *First,* TelHawaii urges the Commission to declare that paragraph 308 of *Universal Service Order* – which provides that "a carrier making a binding commitment on or after May 7, 1997 to purchase a high cost exchange should

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(...Continued)
in an effort to secure access to incumbent LEC networks at the lowest possible (and entirely uneconomic) price. GTE's concerns with the Hatfield model are detailed in its Comments on the Further Notice of Proposed Rulemaking in CC Docket Nos. 96-45 and 97-160 (filed August 8, 1997).

receive the same level of support per line as the seller received prior to the sale"[16] – does not apply to what TelHawaii describes as the "extraordinary" situation of "a transfer of exchanges mandated by a state commission that has replaced the carrier currently serving the high cost exchange and has designated another carrier as the incumbent carrier." *Second*, TelHawaii asks the Commission to designate Hawaii an "insular area" for purposes of paragraphs 314-318 of the *Universal Service Order*.

GTE submits that there is no need for the Commission to decide either of these two matters at this time. Indeed, the Common Carrier Bureau only last month determined that resolution of the first of these matters (regarding the scope of paragraph 308) should be put off until 1999; TelHawaii offers no compelling reason for the Commission to revisit that decision. Resolution of the "insular area" question is likewise premature. If the Commission nonetheless chooses to resolve these issues at this time, GTE urges the Commission to rule (1) that paragraph 308 *does* apply to the scenario described by TelHawaii, and (2) that Hawaii is *not* an "insular area" within the meaning of paragraphs 314-318.

A. Applicability of Paragraph 308

There are two related reasons why this Commission should leave for another day the question whether paragraph 308 applies to the situation described by TelHawaii. The *first* reason is that, as TelHawaii itself acknowledges, the situation TelHawaii identifies is truly "extraordinary." The scenario described by TelHawaii is a loose (and decidedly slanted) characterization of recent developments in Hawaii. There, the Hawaii PUC has designated TelHawaii as the carrier-of-last-resort ("COLR")

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[16] Currently, GTE Hawaiian does not receive any USF support.

and alternative provider of telecommunications service for the Ka'u district on the Island of Hawaii and ordered GTE Hawaiian Tel (the incumbent in Ka'u) to negotiate "for the transfer to *or use by* TelHawaii of GTE Hawaiian Tel's [Ka'u] assets."[17] TelHawaii is unable to point to even *one* other instance where this "extraordinary" situation has transpired. Accordingly, there is no possibility that resolution of this question will establish a useful rule of general applicability, and the question of paragraph 308's applicability to the scenario described in TelHawaii's petition (*i.e.,* the situation in Ka'u) should therefore be resolved only if and when this Commission is asked to rule on some aspect of that proceeding.

The *second* and even more compelling reason why this Commission should not resolve at this time the paragraph 308 question raised by TelHawaii is that the Common Carrier Bureau appropriately and expressly declined to resolve it in a decision released the day before the instant TelHawaii petition. In ruling on a number of TelHawaii's Ka'u-related waiver requests, the Bureau stated:

> **18. Binding Commitment.** TelHawaii estimated its USF support using the rules in place prior to the release of the Universal Service Order, i.e., on the basis of its projected actual cost of providing service. *GTE states that since TelHawaii had not made a binding commitment to purchase the Ka'u exchange prior to May 7, 1997, it is not eligible for USF support.* We note that even if TelHawaii had made a binding commitment to purchase the Ka'u exchange before the established deadline it would not be eligible to receive USF support until 1999, by which time the new universal service rules will mandate that any carrier providing service in the Ka'u area will be eligible for USF support based upon a forward-looking cost model and not on the basis of the purchaser's or seller's actual costs. The issue of whether TelHawaii had a binding commitment has no import if the Ka'u exchange is, in 1999, part of a study area served by a non-rural

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[17] Decision and Order No. 14789, Ordering Paragraph 7 (emphasis added). GTE believes that the Hawaii PUC's actions with respect to Ka'u are unlawful and has appealed the PUC's rulings to the Hawaii Supreme Court, which has been considering the appeal for approximately eight months.

> carrier. *It is premature, therefore, to decide the "binding commitment" issue at this time*, before it is clear that the issue will affect determination of USF support for the Ka'u exchange in 1999. *Accordingly, we shall not decide the binding commitment issue unless and until it becomes clear that the Ka'u exchange will no longer be part of a study area served by a non-rural carrier in 1999.*[18]

TelHawaii's failure even to acknowledge this finding is not surprising, because there is no reason whatsoever for this Commission to depart from the Bureau's decision to leave the question of paragraph 308's applicability for another day.

If the Commission nonetheless decides to address paragraph 308's applicability now, it should rule that paragraph 308 *does* apply to the TelHawaii situation. The purpose underlying paragraph 308 is to prevent gaming of the universal service subsidy system by means of network transactions and the unnecessary increase in support entitlements that could entail. The Commission addressed a related concern in requiring states to use the same cost model for both state and federal universal service purposes.[19] Both of these concerns are implicated here.

The Hawaii PUC's proceedings regarding service to Ka'u reveal that the state agency (1) identified eligibility for federal USF support as relevant to its decision, and (2) expressly conditioned its selection of TelHawaii on that carrier obtaining such support. TelHawaii was favored over GTE precisely because it, unlike GTE, might obtain USF funding for Ka'u. This is precisely the type of unreasonable reliance on the availability of USF payments that paragraph 308 was intended to discourage.[20]

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[18] *In the Matter of Petition for Waivers Filed by TelAlaska, Inc. and TelHawaii, Inc.*, AAD 96-93, DA 97-1508 (July 16, 1997) at ¶ 18 (emphasis added) (footnote omitted).

[19] *Universal Service Order* ¶ 223.

[20] 47 U.S.C. § 308.

There is no basis for distinguishing this situation – where the state commission rather than another carrier is a significant element in the transaction – from the voluntary carrier-to-carrier transfers described in paragraph 308. In both instances, focusing on the availability of subsidies exerts an anti-competitive effect by distracting the carrier or the state commission from undertaking an unbiased evaluation of the telecommunications market in question. Thus, paragraph 308, which is designed to prevent such anticompetitive focus on the availability of subsidies, should apply with equal force in both situations.

B. Definition of "Insular Area"

TelHawaii also asks the Commission to "clarify that Hawaii is an 'insular area' with respect to the Commission's discussion in paragraphs 314-318 of the [*Universal Service] Order*."[21] However, again there is no need for the Commission to resolve this issue at this time. First, contrary to TelHawaii's claim, Hawaii is *not* "now served by a rural carrier."[22] As TelHawaii has recently explained to the Hawaii PUC, TelHawaii will not begin providing service until (at the earliest) the Hawaii Supreme Court rules on the validity of the Commission's designation of TelHawaii as COLR for Ka'u.[23] Second, because the Bureau last month denied TelHawaii's request for a waiver of Commission rules 36.611 and 36.612, TelHawaii will not be eligible to receive federal USF support until 1999 at the earliest. Third, this proceeding lacks the record necessary to make a determination whether Hawaii exhibits high cost characteristics similar to other insular areas.

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[21] Petition of TelHawaii at 2.
[22] Petition of TelHawaii at 4.

If this Commission nonetheless chooses to resolve the question whether Hawaii qualifies as an "insular area" for the purposes of paragraphs 314-318, it should confirm that Hawaii does not belong in that class. TelHawaii argues that Hawaii should be classified along with other insular areas and Alaska because "[r]ural carriers operating in Hawaii face the same unique circumstances facing other insular areas, including higher shipping costs for equipment, damage by tropical storms, and extremely remote rural communities."[24] However, TelHawaii has previously argued that its costs for serving Hawaii will not be so extreme. In attempting to convince the Hawaii PUC that TelHawaii will indeed to able to provide low-cost service to Hawaii residents, TelHawaii (speaking at times through its parent TelAlaska) has claimed *significant differences exist between Hawaii and Alaska*, and that, as a result of these differences, the cost of providing service in Hawaii is significantly *lower* than the cost of providing service in Alaska.[25]

TelHawaii should not be permitted to disavow these showings now. TelHawaii's present conclusory assertion that rural carriers in Hawaii "face the same unique circumstances" as carriers in insular areas is simply unpersuasive. Accordingly, if the Commission decides to address, at this early stage, the question whether Hawaii is an "insular area" for purposes of paragraphs 314-318, the Commission should hold that Hawaii is not such an area.

(...Continued)

[23] See Letter of Jack Rhyner to Commissioners Naito and Yamada (July 25, 1997) (appended hereto as Attachment A) at 2.

[24] Petition of TelHawaii at 4.

[25] *See, e.g.*, TelAlaska, Inc.'s Brief in Hawaii PUC Docket No. 94-0346 (August 30, 1995) at 18-19 (emphasis added) (citations omitted).

V. THE COMMISSION SHOULD NOT ROLLBACK ITS PRESCRIBED SLC INCREASES

The Public Utility Commission of Texas[26] and the Wyoming Public Service Commission[27] request that the Commission revisit its decision to raise subscriber line charges ("SLCs"). These petitioners contend that telephone customers view SLCs as part of their local rates and that, therefore, increased SLCs will be viewed as increased local charges. Such a perception, they argue, would result in customers associating increased competition with higher local rates.

GTE urges the Commission to deny the Texas and Wyoming petitions. SLCs are one of the most economically rational aspects of the entire access charge regime. SLCs provide the telecommunications market with correct economic signals because they allow recovery of non-traffic-sensitive costs on a non-usage-sensitive basis. Thus, they mirror the way the underlying costs are incurred and, thereby, encourage rational economic behavior. As GTE explained in the Access Charge Docket,[28] rather than lowering any SLC, the Commission should allow all SLCs to rise to the full interstate allocated cost. If such an increase were to result in local service becoming unaffordable, the difference between any cap adopted and the full interstate cost should be recovered from the high cost universal service fund.

VI. CLARIFICATION OF THE ELIGIBILITY OF STATE CONSORTIA AND AGENCIES FOR UNIVERSAL SERVICE SUPPORT IS WARRANTED

The American Association of Educational Service Agencies ("AAESA") seeks clarification on whether the Commission can treat its member organizations both as

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[26] Petition of Public Utility Commission of Texas at 7-8 ("Texas Petition").
[27] Petition of the Wyoming Public Service Commission at 5-6.

school[s] and/or school district[s]" and as "provider[s]."[29] GTE has no specific factual knowledge on which to base an opinion on whether any of AAESA's members are or are not eligible as either schools or providers. However, to the extent that AAESA is requesting eligibility for members as both recipients and providers of the same USF services, GTE notes that Section 254(h)(3) of the Act prohibits an entity from being eligible to receive discounts on services while acting as a provider of the same services.[30]

Section 254(h)(3) of the Act states that services provided at a discount to a user "may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value."[31] Section 254(h)(1)(B) specifies that only telecommunications carriers may receive universal service support.[32] Therefore, a state telecommunications network or an educational service agency may be eligible for discount rates as a purchaser, and the telecommunications carrier from whom they purchased services may be reimbursed. But, the state network or educational service agency cannot resell these services to schools and libraries at discounts and expect to

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(...Continued)

28 Opposition to and Comments on Petitions for Reconsideration, Access Charge Reform, Price Cap Review for Local Exchange Carriers, Transport Rate structure and Pricing of GTE, CC Docket Nos. 96-262,94-1,91-213 (Aug. 18. 1997) at 16-19.

29 Letter to Chairman Reed E. Hundt from American Association of Educational Service Agencies Regarding The 1996 Telecommunications Act and the Universal Service Fund, 1-2 (July 16, 1997). Note that several other petitioners seek clarification of their status as providers of telecommunications. *See* Petition of Iowa Telecommunications and Technology Commission at 3; Petition of Florida Department of Management Services at 2; Petition of the Georgia Department of Administrative Services at 3. But, no other petitioner claims to be both a recipient and a provider of the same services.

30 47 U.S.C. § 254(h)(3).

31 Id.

32 47 U.S.C. § 254(h)(1).

receive universal service support for that transaction. The Commission should reaffirm this principle here.

VII. THE THREE YEAR "LOOK BACK" REQUIREMENT IS UNREASONABLY BURDENSOME AND MAY REQUIRE THE PROVISION OF SERVICE ON AN UNLAWFUL BASIS

USTA requests that the Commission reconsider its rebuttable presumption that service providers must "look back" three years for data to determine the Lowest Corresponding Price ("LCP") to be offered to eligible schools and libraries.[33] USTA argues that the three year period is too long, that a one year period would be more appropriate, and that historical and expired promotional tariffs should be excluded from consideration. GTE agrees.

A three year look back period is excessively lengthy. It places a tremendous administrative burden on providers to cull through potentially thousands of past contracts and service offerings that may have been in effect during that time period. The expenditure of such effort will undoubtedly delay the bidding process and inflate the costs of providers, and could result in discouraging potential bidders from participating.

As explained by USTA, a one year look back period will, in contrast, lessen the administrative burden placed on all providers but still satisfy the objectives underlying the look back requirement.[34] Under a one year regime, which would correspond with the typical lifespan of a particular tariff offering, providers will face a more reasonable number of customer contracts that must be reviewed and assessed before determining

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[33] *See* Petition of USTA at 17-18.

[34] A look back period limited to one year will also avoid competitively disadvantaging large providers with more potential contracts or prices to review.

the appropriate LCP. Limiting such burdens will facilitate the bidding process and encourage greater participation, which could result in lower rates for the end users.

In addition to establishing a one year look back period, the Commission should clarify that expired tariffs and promotional offerings are excluded from the comparable rates upon which LCP is determined. Initially, it would be unlawful to require carriers to provide service by means of what are, effectively, wholly out-of-date offerings.[35] Because it is not reasonable to assume that underlying costs and conditions have remained sufficiently stable to render the repetition of superseded rates for such offerings just and reasonable, there should be a presumption in favor of exclusion rather than inclusion of such rates with regard to the look back period.[36] Moreover, promotional offerings are, by their very nature, limited availability incentive programs.[37] As such, they cannot be replicated once the promotion has ended.

GTE therefore supports shortening the look back period for calculation of the LCP from three years to one year and excluding historical tariff rates and expired promotional rates from the rates used to determine the LCP.

VIII. THE COMMISSION SHOULD DEFINE TOLL LIMITATION TO REQUIRE THE OFFERING OF EITHER TOLL BLOCKING OR TOLL CONTROL, BUT NOT BOTH

GTE also supports USTA's request that the Commission redefine its toll limitation requirement to include either toll blocking or toll control, but not both.[38] Because the provision of either capability should accomplish the Commission's objectives of allowing consumers to regulate their toll usage, requiring both is

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35 *See* Petition of USTA at 17-20.
36 *See Universal Service Order* ¶ 489.
37 *Id.*

unnecessarily duplicative. Moreover, because of technical and monitoring limitations, effective toll control may be unavailable or prohibitively expensive in certain areas.

Toll control is defined as a service provided by carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunication channel per month or per billing cycle.[39] In theory, toll control accomplishes the same goal as toll blocking.[40] But, while toll control requires more than just the central office translations used for toll blocking, it produces no measurable additional benefits. Moreover, although proper toll control requires the LEC to develop a system to monitor usage and collect billing information for each Lifeline customer from toll carriers, such efforts are likely to both expensive and ineffective. Nor is there any way for LECs to control usage of prepared calling cards. These and other problems will place unwarranted burdens on smaller LECs and discourage new entrants from offering services targeted to low-income individuals. Most obviously, parties can also "dial around" a system of toll control simply by using a 10XXX dialing arrangement to reach an IXC that does not provide toll billing information to the ILEC.

The Commission can avoid burdening LECs and the public interest in this manner by modifying the definition of toll limitation to denote *either* toll blocking *or* toll

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(...Continued)

[38] *See* Petition of USTA at 4-7, 17-20. *See also* Petition of US WEST at 20-22.

[39] 47 C.F.R. § 54.400(a). This definition is not consistent with the toll control program used by GTE because, under GTE's program, the company, subject to state commission concurrence, chooses the maximum amount of a customer's bill by using commercially available credit history information. GTE is currently performing an analysis to determine the extent of system modifications needed to allow the customer to specify the maximum amount.

[40] Toll blocking allows consumers to elect not to allow the completion of outgoing toll calls from their telecommunications channel. It is typically accomplished through central office translations which restrict an end user's line from placing toll calls.

control. Such a change will promote the public interest while, at the same time, avoid gratuitous regulation.

IX. THE COMMISSION SHOULD CLARIFY THAT CARRIERS PROVIDING SUPPORTED SERVICES VIA RESALE AND THEIR OWN OPERATOR SERVICES ARE NOT ELIGIBLE FOR UNIVERSAL SERVICE SUPPORT

Time Warner Communications Holdings, Inc.[41] and Sprint Corporation[42] ask the Commission to reconsider its statement that a carrier could satisfy the facility requirement for universal service support eligibility merely by providing its own operator services in conjunction with resold local exchange service.[43] GTE joins in this request. The Commission has found that the universal service fund should "compensate carriers for serving high cost customers at below cost prices"[44] and that "universal service support should be provided to the carrier that incurs the costs of providing service to a customer."[45] Accordingly, notwithstanding the Commission's apparent statement to the contrary in paragraph 169 of the *Universal Service Order*, it cannot be that a CLEC that resells an ILEC's basic service at wholesale rates in conjunction with its own operator services is entitled to universal service support.

In the absence of any viable allocation methodology, there is no mechanism by which high cost support – even if attributable in part to operator services – could at present be divided between the wholesale and retail carriers in the above scenario, and the wholesale carrier clearly incurs by far the largest amount of cost in serving such a customer. The Commission should, therefore, grant the Sprint and Time Warner

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41 Petition of Time Warner Communications Holdings, Inc. at 2-5.
42 Petition of Sprint at 3-4.
43 *Universal Service Order* at ¶ 169.
44 *Id. at ¶ 290.*
45 *Id. at ¶ 162 (footnote omitted).*

petitions and clarify that a CLEC reselling an ILEC's basic local exchange service at wholesale rates is not eligible for universal service support. As Time Warner explains, to do otherwise would undermine universal service objectives and violate both the principle of competitive neutrality and the requirement that "universal service" support be used for that purpose.[46]

GTE would add that the Commission cannot ignore these adverse consequences simply on the basis of its belief that such problems are not likely to manifest themselves before its new universal service funding mechanism becomes effective January 1, 1999.[47] Resold services are now or soon will be offered in conjunction with unbundled operator services, and the risk is, thus, manifest. The Commission should therefore promptly issue the requested clarification.

X. THE COMMISSION MUST CLARIFY SEVERAL ISSUES RELATED TO CMRS PROVIDERS AND THE UNIVERSAL SERVICE PROGRAM

GTE concurs with Cellular Telecommunications Industry Association ("CTIA") that commercial mobile radio service ("CMRS") providers face unique difficulties assessing the jurisdictional status of their traffic for purposes of calculating their universal service obligations.[48] CMRS providers have not traditionally been required to separate costs between the federal and state jurisdictions. In particular, given the mobile nature of CMRS offerings, the multi-state coverage of some antenna systems, and the Commission's own licensing scheme for PCS that traverses state lines, it will often be difficult to establish the jurisdictional nature of a mobile call. Accordingly, GTE supports CTIA's request that CMRS providers be permitted to utilize their revenue

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46 Petition of Time Warner at 6-8.

47 *See Universal Service Order at ¶ 173.*

calculations under the Telecommunications Relay Service rules as a proxy for interstate revenues subject to universal service levies. Because those revenues include both wholesale and retail services, however, CMRS providers must be permitted to exclude all non-end user revenues from TRS calculations for universal service reporting purposes.

Although TRS calculations should serve as a default proxy, the Commission should permit CMRS providers to conduct a special study of their own traffic levels to determine interstate retail revenues. To this end, GTE currently has an effort underway to analyze call detail records to establish the percentage of GTE's mobile traffic that is jurisdictionally interstate.

GTE likewise supports CTIA's request that the Commission confirm that states' authority to collect universal service contributions from CMRS providers may not serve as the basis for state regulation of CMRS rates. Section 332 provides that states may not regulate CMRS rates unless a CMRS offering becomes a replacement for landline telephone exchange service for a substantial portion of such state.[49] As pointed out by courts on both the state and federal levels, nothing in Section 254 suggests that the Congress intended that section to authorize any type of regulation apart from the establishment of a universal service program.

In *Mountain Solutions, Inc. v. State Corporation Commission of the State of Kansas,* 966 F.Supp. 1043 (D. Kan. 1997),[50] a federal district court concluded that,

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(...Continued)

48 *See* Petition of CTIA at 12-23.

49 47 U.S.C. § 332.

50 *Mountain Solutions, Inc. v. State Corp. Comm. of the State of Kansas,* 966 F. Supp. 1043 (D. Kan. 1997).

while universal service contribution obligations imposed by the Kansas Corporation Commission were permissible, "Congress appears to have intended that states generally are prohibited from regulating the rates or market entry of commercial mobile service providers" unless "commercial mobile services are a substitute for land line telephone exchange service in the majority of the state."[51] Rather than constituting rate regulation, mandatory universal service contributions at the state level are simply "an additional cost of doing business."[52] Thus, notwithstanding the establishment of a state universal service program that includes CMRS providers, an independent evidentiary proceeding would be required under Section 332 before the state could seek to regulate such entities.

CTIA is also correct in urging that states must apply universal service obligations to all carriers on a competitively and technologically neutral basis. For example, states should not be permitted to manipulate their eligible carrier definitions to exclude particular categories of carriers merely because they provide additional functionality to users. Rather, such definitions should be based on the offering of the functionality necessary to provide the supported services without reference to supplementary capabilities that also might be offered by a particular carrier or class of carriers.[53]

The Commission should also ensure that state universal service programs do not impose discriminatory or duplicative obligations on certain classes of carriers. For

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[51] *Id.* at 1048. This reasoning was concurred with in *Citizens' Utility Ratepayer Board v. The State Corp. Comm. of the State of Kansas*, No. 78,548, 1997 Kans. App. LEXIS 127, *24 (Kan. Ct. App. Aug. 8, 1997).

[52] *Id.*

[53] Competitive neutrality is critical to realize the goals of the Telecommunications Act. An even-handed regulatory environment will result in fair, robust competition. The Commission should not entertain any petitions, like that of Western Alliance, that

(Continued...)